

Department of State

§ 137.100

shall be grounds for disciplinary actions against the employee in accordance with the employing agency's procedures and regulations. Employees shall ensure compliance by family members with policies, rules or procedures issued by the chief of mission.

§ 136.6 Contractors.

To the extent that contractors enjoy importation or tax privileges in a foreign country because of their contractual relationship to the United States Government, contracting agencies shall include provisions in their contracts that require the contractors to observe the requirements of these regulations and all policies, rules, and procedures issued by the chief of mission in that foreign country.

PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A TO PART 137—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B TO PART 137—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 137—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2658.

SOURCE: 53 FR 19178 and 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notices published at 55 FR 21679, May 25, 1990 and 60 FR 33036, June 26, 1995.

Subpart A—General

§ 137.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded

from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in §137.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103-355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33045, June 26, 1995]

§ 137.105 Definitions.

The following definitions apply to this part:

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *nolo contendere*.

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

Department. Department of State.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a